

CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM

DEPARTMENT: Planning Research & Development
AGENDA DATE: Introduction 11-16-04; Public Hearing 11-30-04
CONTACT PERSON/PHONE: Esther Guerrero, Planning Technician
DISTRICT(S) AFFECTED: #2

SUBJECT:

AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO THE SUN BOWL ASSOCIATION AUTHORIZING THE ENCROACHMENT OF SEVENTY-NINE TEMPORARY STREET DISPLAYS ON CITY FIXTURES AND UTILITY POLES ON PORTIONS OF AIRWAY BOULEVARD BETWEEN GATEWAY WEST BOULEVARD AND CONVAIR ROAD PROMOTING THE VITALIS SUN BOWL GAME. (Fee: \$N/A, SP-04026, District 2

BACKGROUND / DISCUSSION:

See attached information.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

N/A

AMOUNT AND SOURCE OF FUNDING:

N/A

BOARD / COMMISSION ACTION:

Development Coordinating Committee (DCC) unanimously recommended approval on November 3, 2004.

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: George Sarmiento

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

GENERAL INFORMATION:

SUBJECT: Special Privilege SP-04026

The Special Privilege will permit the placement of seventy-nine single and double hung temporary street displays (banners) along portions of Airway Boulevard between Gateway West Boulevard and Convair Road. The displays shall be mounted by the City Street Department on designated street light poles along the designated route.

Title 15 of the El Paso Municipal code allows temporary street displays to be maintained for no more than a three (3) month period, except as otherwise recommended by the Development Coordinating Committee (DCC).

The applicant has requested a three (3) year term and the DCC has recommended favorably with the option to renew for additional three (3) year terms prior to the expiration of this Special Privilege.

The Special Privilege is subject to the following:

- No display with a clearance less than eleven (11) feet (measured from the bottom of the display), nor a projection of more than four (4) feet, shall encroach over a public right-of-way shall not be permitted;
- No display permitted over the roadway portion of the public right-of-way shall have a clearance less than fourteen feet six inches (14' 6"), measured from the bottom of the display, nor a projection of more than two (2) feet;
- Maximum area of a street display shall be two feet-six inches (2' 6") by five feet (5');
- The display material must be properly maintained in a safe condition, free of ripping, tearing and other damage at all times; and
- All installation and removal of temporary street displays on City fixtures shall be performed by the City;
- Liability insurance shall be maintained throughout duration of term; and

**AN ORDINANCE GRANTING A SPECIAL PRIVILEGE TO THE SUN BOWL ASSOCIATION
AUTHORIZING THE ENCROACHMENT OF SEVENTY-NINE TEMPORARY STREET
DISPLAYS ON CITY FIXTURES AND UTILITY POLES ON PORTIONS OF AIRWAY
BOULEVARD BETWEEN GATEWAY WEST BOULEVARD AND CONVAIR ROAD
PROMOTING THE VITALIS SUN BOWL GAME.**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

That the Mayor be authorized to sign, on behalf of the City of El Paso, a Special Privilege upon the following terms to the SUN BOWL ASSOCIATION, for the display of temporary street banners to be located on portions of public right-of-way:

1. This Special Privilege shall be in a form, which is attached and incorporated as Exhibit "A";
2. The Special Privilege is to permit the SUN BOWL ASSOCIATION, to encroach onto portions of City public right-of-way with seventy-nine (79) display banners as described in Section 1 of Exhibit "A", and more particularly shown in the attached and incorporated Exhibit "B";
3. As consideration for this Special Privilege, the SUN BOWL ASSOCIATION shall pay the City of El Paso the sum set forth in Section 3 of Exhibit "A", subject to the terms and conditions of this ordinance and Special Privilege; and
4. This Special Privilege shall for a term of three (3) years.

PASSED AND APPROVED this 30th day of **November, 2004.**

THE CITY OF EL PASO

ATTEST:

Joe Wardy
Mayor


Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Matt Watson
Assistant City Attorney

APPROVED AS TO CONTENT:



George Sarmiento, Director
Planning, Research & Development

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

EXHIBIT "A"
SPECIAL PRIVILEGE

THIS SPECIAL PRIVILEGE, made and entered into this **30th** day of **November, 2004**, by and between the **CITY OF EL PASO**, hereinafter called "City", and the **SUN BOWL ASSOCIATION**, hereinafter called "Grantee".

WITNESSETH:

WHEREAS, Grantee is requesting the use of portions of City public right-of-way along Airway Boulevard between Gateway West Boulevard and Convair Road in the City of El Paso, El Paso County, Texas; and

WHEREAS, the Grantee has requested permission from the City to erect seventy-nine (79) display banners that will each in their entirety encroach no more than two feet six inches by five feet (2'6" x 5') onto portions of public right-of-way located along Airway Boulevard; and

WHEREAS, the City Council of the City of El Paso finds that the grant of this Special Privilege under the terms and conditions hereinafter set forth is not inconsistent with and will not unreasonably impair the public use of the right-of-way.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, the parties agree and covenant as follows:

1. **DESCRIPTION.** The City hereby grants a Special Privilege to Grantee to encroach onto portions of public right-of-way along Airway Boulevard between Gateway West Boulevard and Convair Road in El Paso County, El Paso, Texas, as shown in Exhibit "B", which is attached hereto and made a part hereof for all purposes, and which is hereinafter referred to as "Premises".

2. **TERM.** The term of this Special Privilege shall be for three (3) years from the date of execution of this agreement. The City shall have the sole option to renew this Special Privilege upon the request of the Grantee for additional three (3) year options. If the Grantee wishes the City to renew this Special Privilege for an additional three (3) year term, Grantee shall submit a request in writing to the City no later than three (3) months prior to the expiration date of this Special Privilege. This Special Privilege shall expire without notice at the end of such expiration period unless a request

for renewal is submitted in writing to the City by the Grantee as herein required. Should Grantee fail to submit such request for the renewal of this Special Privilege to the City as herein required, the Special Privilege should expire upon the expiration date. Grantee understands, agrees, and accepts that the City may require that the terms, conditions, and provisions of this Special Privilege be modified as a condition for renewing the grant of the encroachment upon or through public rights-of-way as permitted by this Special Privilege. If, upon request for renewal, the only term to be changed is the consideration, such renewal may be provided for administratively by the City Manager.

3. CONSIDERATION. As consideration for this Special Privilege, Grantee shall pay to the City Ten and No/100 Dollars (\$10.00) per banner for the display duration, plus the City's cost for installation, inspection and removal, and a bracket rental fee in the amount of Thirty and No/100 Dollars (\$30.00) per single hung bracket, for a total sum of Three Thousand One Hundred Sixty and No/100 Dollars (\$3,160.00). However, in light of a finding by the El Paso City Council that there is a public benefit derived from the in kind consideration provided by the Sun Bowl Association in highlighting this nationally recognized bowl game exceeding the costs herein contemplated, such costs required pursuant to ordinance are hereby off-set accordingly and no funds are due. The City shall perform all installation and removal of street displays on City fixtures. Grantee shall still be responsible for providing insurance as is otherwise required by ordinance.

This Special Privilege is granted on the condition that Grantee shall pay for all costs associated with the production of the display banners and parade logo.

4. USE OF PROPERTY. This Special Privilege is granted solely for the encroachment onto public right-of-way with seventy-nine (79) display banners measuring approximately two feet-six inches by five feet (2'6" x 5'). No display banner with a clearance less than eleven feet (11') (measured from the bottom of the display), nor a projection of more than four feet six inches (4'6"), shall encroach over any portion of the paved right-of-way (any portion encroaching over the paved portion of the right-of-way shall provide a clearance of fourteen feet six inches (14'6"); and one (1) parade logo to encroach onto the public roadway. Grantee shall not request installation until execution of this Special Privilege by City Council.

Grantee agrees that the display material shall be properly maintained in a safe condition at all times and will not be permanently installed or attached, and will allow for wind cuts to reduce any tendency of the material to billow or sail.

The temporary street displays must be delivered to the designated City department no later than two (2) weeks prior to the scheduled installation, and must be picked up no later than two (2) weeks after notice from the City of their removal or be subject to storage costs. The City shall not be liable for any speculative damages as a result of any reasonable delay to the scheduled time for the installation of the display.

Grantee agrees to restore the Premises to its original state upon removal of any of the encroachments stated herein.

Nothing contained herein shall grant or be construed to grant any real property interest to the Grantee, nor shall it give rise to any vested right in the Grantee, his assigns or successors in interest who shall not have a cause of action for damages upon revocation of this Special Privilege.

Nothing contained herein shall be construed to imply that the City is involved in the design, construction, maintenance or repair of the Structure.

5. IMPROPER USE. This Special Privilege shall not permit or be construed to permit any other private use of the City's right-of-way, which impairs its function as a right-of-way. Grantee shall not install any additional display banners, or make any additions or alterations on or over the City right-of-way, without the prior written consent of the City Council.

6. REPAIRS. Grantee shall keep the display banners in good condition and repair and in a clean, orderly and attractive condition during the term of this Special Privilege. The City shall not be responsible for the cost of replacing a display banner resulting from any damage incurred during its installation, removal or when replacement is deemed necessary by the City in order to maintain a safe condition. Grantee shall be responsible for all maintenance costs.

7. INDEMNITY. As a condition of the Special Privilege, Grantee shall indemnify, defend and hold harmless the City, its officers, agents, servants and employees from any and all claims, losses, damages, causes of action, suits, and liability of every kind, including all expenses of litigation for injury or death of any

person, or for damage to any property, arising out of or in connection with Grantee's use of the public right-of-way, regardless of whether such injuries, death, or damages are caused in whole or in part by the negligence of the City.

8. LIABILITY INSURANCE. Grantee shall provide public liability insurance for personal injuries and death growing out of any one accident or other cause in a minimum amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) per person, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for two (2) or more persons in any one accident, and, in addition, shall provide property damage liability insurance in a minimum sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) for property damage growing out of any one accident or other cause. These amounts are not a limitation upon the Grantee's agreement to indemnify and hold the City harmless.

Grantee shall maintain said insurance with a solvent insurance company authorized to do business in Texas. The policy shall provide that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, servants or employees and Grantee, his officers, agents, servants or employees. All policies shall name the City of El Paso, its officers, agents, servants and employees as additional insured to the full amount of the policy limits.

No special privilege license shall be granted by City Council until Grantee files a copy of the policy or certificate of liability insurance as herein set forth with the City Clerk, the City Attorney's Office, and the Department of Planning, Research & Development. Such policy or certificate shall provide that the insurance cannot be canceled or the amount of coverage changed without ten (10) days prior written notice to the City Clerk. Failure to keep the policy in full force and effect throughout the term of the Special Privilege shall be grounds for cancellation of this Special Privilege.

9. CANCELLATION. Should the City at any time or for any reason decide that the public right-of-way onto which the display banners are encroaching is needed for public use, the City may upon thirty days (30) written notice, cancel this Special Privilege at no cost to the City and may, take possession of the public right-of-way. All rights of the Grantee in the Premises shall then be terminated. Grantee may cancel

this Special Privilege, for any reason, upon thirty days (30) prior written notice to the City, and all rights of the Grantee shall then be terminated.

Any waiver by the City of any breach of any of Grantee's obligations shall not be deemed a continuing waiver, and shall not prevent the City from exercising any remedy it may have for any succeeding breach of the same or another obligation of the Grantee.

10. LIENS AND ENCUMBRANCES. Grantee shall defend and indemnify the City against any liability and loss of any type arising from any lien or encumbrance on the property that arises or is alleged to have arisen from Grantee's use of the Premises.

11. ASSIGNMENT. Grantee shall not assign this Special Privilege without the prior written consent of the City Council.

12. MISCELLANEOUS.

a. **SIGNS:** No sign permit shall be required for any authorized temporary street display.

b. **LAWS AND ORDINANCES:** Grantee shall comply with all statutes, laws, codes and ordinances applicable to Grantee's construction and maintenance of the display banners, as well as Grantee's use of the Premises, except as specifically provided by the grant of this Special Privilege.

c. **SUCCESSORS AND ASSIGNS:** All of the terms, provisions, covenants and conditions of this Special Privilege shall inure to the benefit and be binding upon the parties, their successors and assigns.

d. **NOTICES:** All notices provided for herein shall be sufficient if sent by certified or registered mail, return receipt requested, postage fully prepaid, addressed to the proper party at the following addresses:

City of El Paso
Attn: Mayor
#2 Civic Center Plaza, 10th Floor
El Paso, Texas 79901-1196

With copy to:

City of El Paso
Attn: City Clerk
#2 Civic Center Plaza, 10th Floor
El Paso, Texas 79901-1196

And:

Sun Bowl Association
4150 Pinnacle, Suite 100
El Paso, Texas 79902

Or to such other address as the parties may designate to each other in writing from time to time.

e. **ENTIRE AGREEMENT:** This document contains all of the agreements between the parties and may not be modified, except by an agreement in writing signed by both parties.

f. **SEVERABILITY:** Every provision of this Special Privilege is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Special Privilege.

g. **LAW GOVERNING:** The laws of the State of Texas shall govern the validity, performances and enforcement of this Special Privilege and if legal action is necessary to enforce it, exclusive venue shall lie in El Paso County, Texas.

13. RESTRICTIONS AND RESERVATIONS. This Special Privilege is subject to all rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land. If, at any time during the initial term of this Special Privilege, or any extension thereof, any such rights-of-way, easements, dedications, restrictions, reservations and other encumbrances of record and running with the land, preclude, interrupt or interfere with Grantee's use of the Premises, Grantee shall have the right to terminate this Special Privilege upon giving the City prior written notice of its intention to do so.

14. EFFECTIVE DATE. This Special Privilege shall not take effect unless Grantee files its written acceptance with the Department of Planning, Research & Development prior to its passage and approval by the City Council. If Grantee accepts the terms and conditions of this Special Privilege as a corporation, each of the persons accepting on behalf of such Grantee warrant to the City that the corporate Grantee is a duly authorized and existing corporation, that the corporate Grantee is qualified to do business in the State of Texas, that the corporate Grantee has full right and authority to accept the terms and conditions of this Special Privilege and that each and every

person signing on behalf of the corporate Grantee is authorized to do so. Upon the City's request, the corporate Grantee will provide evidence satisfactory to the City confirming these representations.

WITNESS THE FOLLOWING SIGNATURES AND SEALS:

THE CITY OF EL PASO

ATTEST:

Joe Wardy
Mayor

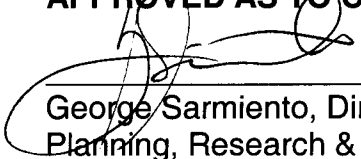
Richard Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Matt Watson
Assistant City Attorney

APPROVED AS TO CONTENT:



George Sarmiento, Director
Planning, Research & Development

ACCEPTANCE

The attached instrument, with all conditions thereof, is hereby accepted this ____ day of _____, 2004.

**GRANTEE: SUN BOWL
ASSOCIATION**

By: _____

(Printed name/title)

ACKNOWLEDGMENT

THE STATE OF TEXAS)
)
COUNTY OF EL PASO)

This instrument is acknowledged before me on this ____ day of _____, 2004, by _____ as _____ on behalf of **SUN BOWL ASSOCIATION**, as Grantee.

My Commission Expires:

Notary Public, State of Texas

Notary's Printed or Typed Name:
